

State Of Hawaii  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813  
August 22, 2008

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

**HAWAII**

SUBJECT: Issuance of Right-of-Entry to the United States of America,  
Department of the Army, U. S. Army Engineer District, Honolulu,  
for Investigation/Inspection over a Portion of the Former Waikoloa  
Maneuver Area at Lalamilo, South Kohala, Hawaii,  
Tax Map Keys: 3<sup>rd</sup>/6-6-02:31, 32, 34, 35, 40, 41 and 42

**APPLICANT:**

United States of America, Department of the Army, U. S. Army Engineer District, Honolulu,  
Building 230, Fort Shafter, HI 96858-5440

**LEGAL REFERENCE:**

Section 171-6, Hawaii Revised Statutes (HRS), as amended

**LOCATION:**

Portion of Government lands of the Former Waikoloa Maneuver Area situate at Lalamilo,  
South Kohala, Hawaii, identified by Tax Map Key: 3<sup>rd</sup>/6-6-02:31, 32, 34, 35, 40, 41 and 42, as  
shown on the attached map labeled Exhibit A.

**TMK/ZONING/ENCUMBRANCE/AREA:**

TMK	ZONE		AREA	ENCUMBRANCE
	LUC	CZO	(acres)	
3 <sup>rd</sup> /6-6-02:31	Conservation	Commercial (CV-10), Open, Resort (V-1.25) Residential (RS-15)	140.862	Right-of-Entry to University of Hawaii over 5.000+ ac LOD S-28428 to Wailea Assoc. over .4561 ac LOD S-28463 to Verizon over .7803 ac LOD S-28586 to COH-BWS over .7209 ac RP S-7166 to Lalamilo Makai Property Owner Assoc. over .45 ac

3 <sup>rd</sup> /6-6-02:32	Conservation	Open	1.331	GEO No. 2909 for the Hapuna Beach SRA
3 <sup>rd</sup> /6-6-02:34	Conservation	Open	.170	GEO No. 2909 for the Hapuna Beach SRA
3 <sup>rd</sup> /6-6-02:35	Conservation	Open	36.46A.	GEO No. 2909 for the Hapuna Beach SRA
3 <sup>rd</sup> /6-6-02:40	Conservation	Agriculture (A-5a) Ag-5ac	144.207	LOD S-28459 to Verizon
3 <sup>rd</sup> /6-6-02:41	Conservation	Agriculture (A-5a) Ag-5ac	137.832	LOD S-28463 to Verizon over .7803 ac
3 <sup>rd</sup> /6-6-02:42	Conservation	Open	3.140	LOD S-28586 to County of Hawaii BWS over .7209 ac

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act  
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

To conduct an investigation/inspection to prepare a project work plan which identifies the proposed methodology of removing and disposing of all explosive hazards within the right-of-entry area.

TERM OF RIGHT-OF ENTRY:

This right-of-entry is for two years, commencing upon approval by the Board of Land and Natural Resources, and expiring upon its second anniversary, or upon completion of the investigation/inspection work, whichever is the sooner.

CONSIDERATION:

Gratis.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

The Applicant is responsible for compliance with Chapter 343, Hawaii Revised Statutes, as amended, Environmental Impact Statements and/or the National Environmental Policy Act (NEPA).

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Obtain written concurrence from all users of the subject land. Proof of compliance shall be submitted to the department.

REMARKS:

The United States of America, Department of the Army, U. S. Army Engineer District, Honolulu (Exhibit B), has requested for their Formerly Used Defense Sites (FUDS) Program, a right-of-entry to various lands under the control and management of the Division of State Parks. The identified parcels include the Hapuna Beach State Recreation Area, the Waialea Bay Section and various easements/rights-of-ways that provide services to the Waialea Bay homeowners.

The USAED-H writes: "The Former Waikoloa Maneuver Area is a Formerly Used Defense Site (FUDS) on the island of Hawaii. The U.S. Navy acquired the property through a lease agreement in 1943 and used it until 1953 for intensive live-fire training.

Before returning the property to its original owners, the Department of Defense conducted extensive surface clearance throughout the 135,000-acre property. Decades later, when the property was being evaluated for inclusion in the FUDS program, it was determined that a wide variety of munitions and explosives of concern (MEC) were still present on the surface and subsurface. In July 2003 the Army prepared a report describing its plan to address the safety risks. The report identifies approximately 50,000 acres in the Waikoloa-Waimea-Lalamilo-Puako areas where MEC pose the highest potential risk to the public. Your area is included within this area. Since 2003 the Army has expended approximately \$64 million in response actions at the former Waikoloa (Maneuver Area) to clear approximately 10,000 acres. A total of over 1,400 unexploded munitions were disposed of and over 250 tons of munition debris and other former military debris were recycled. Most of the activities have been concentrated around Waikoloa Village and Waimea Town.

SCOPE OF WORK:

The Contractor will be responsible for preparing a project work plan which identifies the Contractor's proposed methodology of removing and disposing of all explosives hazards."

The submittal was sent to the Office of Hawaiian Affairs for their review and comments (Exhibit C). No response was received.

RECOMMENDATION:

That the Board, subject to the Applicant fulfilling the Applicant Requirements above, authorize the issuance of a right-of entry to the United States of America, Department of the Army, U. S. Army Engineer District, Honolulu (USAED-H). The purpose of the right-of-entry is to allow the USAED-H, its contractors, consultants and/or persons acting for or on its behalf, to conduct an investigation/inspection to prepare a project work plan which identifies the proposed methodology of removing and disposing of all explosive hazards. This right-of-entry, covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein, and is further subject to the following:

1. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
2. In consideration of the issuance of this right-of-entry, USAED-H, its contractors, consultants and/or persons acting for or on its behalf releases the State and its employees and representatives from all claims or liability for any loss that might occur while on the demised premises for whatever reason or cause, including without limitation unexploded ordnances;
3. The USAED-H shall insure that its contractors, consultants and/or persons acting for or on its behalf shall procure, at its own expense, and maintain during the entire period of this right-of-entry, from an insurance company or companies licensed to do business in the State of Hawaii, a policy or policies of comprehensive public liability insurance in an amount acceptable to the Department (\$1,000,000.00 per occurrence/\$2,000,000.00 aggregate) insuring the State of Hawaii against all claims for personal injury, death, and property damage; that said policy shall cover the entire right-of-entry area, including all improvements and grounds and all roadways or sidewalks on or adjacent to the said right-of-entry area in the control or use of the USAED-H, its contractors, consultants and/or persons acting for or on your behalf;
4. If any action of the USAED-H, its contractors, consultants and/or persons acting for or on its behalf in the exercise of this right-of-entry results in damage to the real property, USAED-H, its contractors, consultants and/or persons acting for or on its behalf will at its option, either repair such damage or make an appropriate settlement with the State. In no event shall the repair or settlement exceed the fair market value of the fee interest of the real property at the time immediately preceding such damage. USAED-H's liability under this clause may not exceed appropriations available for such payment and nothing contained in this agreement

may be considered as implying that Congress will at a later date appropriate funds sufficient to meet deficiencies. The provisions of this clause are without prejudice to any rights the State may have to make a claim under applicable laws for any other damages than provided herein;

5. The USAED-H, its contractors, consultants and/or persons acting for or on its behalf shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. The USAED-H, its contractors, consultants and/or persons acting for or on its behalf shall not allow the storage or use of such materials in any manner not sanctioned by law or regulation, or if the material is unregulated, to the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the right-of-entry area any such materials except to use in the ordinary course of business of the USAED-H, its contractors, consultants and/or persons acting for or on its behalf, and then only after written notice is given to the State of the identity of such materials and upon the State's consent which may be withheld at the State's sole and absolute discretion. In accordance with USAED-H guidance for the investigation and remediation of Former Used Defense Sites (FUDS), the USAED-H will conduct soil sampling for hazardous and toxic substances during project execution, and will provide copies of all test results to the DLNR. The USAED-H will provide the DLNR with copies of all final reports produced during its investigation of the property, which is the subject of this right-of-entry;
6. The USAED-H, its contractors, consultants and/or persons acting for or on its behalf shall be responsible for damage or injury caused by or resulting from any act or omission of the USAED-H, its contractors, consultants and/or persons acting for or on its behalf in connection with the release of hazardous materials on the right-of-entry area occurring or resulting from activities of the USAED-H, its contractors, consultants and/or persons acting for or on its behalf or elsewhere if caused by the USAED-H, its contractors, consultants and/or persons acting for or on its behalf. These covenants shall survive the expiration or earlier termination of this right-of-entry.

For purposes of this right of entry, "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous substance, or oil as defined in pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted, to the extent such definition and such law, regulation, ordinance, rule, or by-law is consistent with Federal law and the supremacy Clause of the United States Constitution;

7. The USAED-H, its contractors, consultants and/or persons acting for or on its behalf, acknowledges and agrees that portions of the right-of-entry area is raw and unimproved, that the State of Hawaii has made no effort to determine or remedy possible hazards located thereon, and that the USAED-H, its contractors, consultants and/or persons acting for or on its behalf enters said lands at its own risk;
8. The USAED-H, its consultants, contractors and/or persons acting for or on its behalf, shall comply with all laws, statutes, ordinances, rules, and regulations of the Federal, State, and County government affecting the right-of-entry area to the extent that compliance is consistent with Federal law and the Supremacy Clause of the United States Constitution;
9. The USAED-H, its contractors, consultants and/or persons acting for or on its behalf in the exercise of this right-of-entry, shall use appropriate precautions and measures to minimize inconveniences to surrounding residents, landowners, and the public in general;
10. The USAED-H, its contractors, consultants and/or persons acting for or on its behalf, shall understand that a portion of the right-of-entry area is an active, heavily utilized state park with lodgers and day users;
11. The USAED-H, its contractors, consultants and/or persons acting for or on its behalf, shall obtain the concurrence of the Governor of Hawaii and the Chairperson of the Board of Land and Natural Resources prior to closing the Hapuna Beach State Recreation Area or any portion thereof;
12. No open fire or burning of any type shall be permitted on the right-of-entry area and/or surrounding State property;
13. In the event any unanticipated sites or remains such as bone or charcoal deposits, human burials, rock or coral alignments, paving or walls are encountered, the USAED-H, its contractors, consultants and/or persons acting for or on its behalf in the exercise of this right-of-entry shall stop work and contact the State Historic Preservation Division in Honolulu at (808) 692-8015 immediately;
14. The USAED-H, its contractors, consultants and/or persons acting for or on its behalf shall not store any personal belongings at the subject property during the effective period of this right-of-entry;
15. The right-of-entry shall be reviewed and approved as to form and legality by the Department of Attorney General;

16. The Department of Land and Natural Resources, Division of State Parks, its Chairperson, Administrator and/or authorized representative reserves the right to impose additional mutually agreed upon terms and conditions, if deemed necessary while this right-of-entry is in force.

Respectfully submitted,

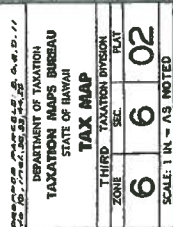


Daniel S. Quinn  
State Parks Administrator

APPROVED FOR SUBMITTAL:



LAURA H. THIELEN, Chairperson



**FOR REAL PROPERTY TAXATION PURPOSES  
SUBJECT TO CHANGE**

## EXHIBIT A



DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, HONOLULU  
FORT SHAFTER, HAWAII 96858-5440

REPLY TO  
ATTENTION OF:

March 21, 2008

Real Estate Branch

Mr. Wesley Matsunaga, Land Agent  
State of Hawaii  
Department of Land and Natural Resources  
Land Division  
Hawaii District Land Office  
75 Aupuni Street, Room 204  
Hilo, HI 96720

Dear Mr. Matsunaga:

The United States Army Corps of Engineers' Formerly Used Defense Sites (FUDS) Program requests access to the State of Hawaii properties in South Kohala, County of Hawaii, State of Hawaii, as identified on the enclosed listing and TMK maps, to perform an environmental assessment and response since these properties have been identified as being located in the area known as the Former Waikoloa Maneuver Area.

Our office is requesting a two-year Right-of-Entry and will be agreeable to similar terms and conditions as set forth in the previous ROE No. DACA84-9-07-84 which is also enclosed.

Please send an advance State-signed Right-of-Entry to [Ann.M.Loo@poh01.usace.army.mil](mailto:Ann.M.Loo@poh01.usace.army.mil) via e-mail. The original State-signed Right-of-Entry should be mailed to the address indicated below:

U.S. Army Corps of Engineers  
Honolulu District  
Building 230  
ATTN: CEPOH-RE (Ms. Ann Loo)  
Fort Shafter, HI 96858-5440

Upon fully execution by our office, an executed copy will be sent to your office. Should you have any questions or concerns, please contact Ms. Ann Loo at (808) 438-0871. Thank you.

Sincerely,



Michael Sakai  
Chief, Real Estate Branch

Enclosures

**EXHIBIT B**



"Shirakata, Gary N POH"  
<Gary.N.Shirakata@poh01.usace.army.mil>  
04/19/2008 04:04 PM

To <glenn.y.taguchi@hawaii.gov>  
cc "Loo, Ann M POH" <Ann.M.Loo@poh01.usace.army.mil>  
bcc

Subject Right of Entry for Waikoloa Formerly Used Defense Site

Hi Mr. Taguchi,

I am the U.S. Army Corps of Engineers, Honolulu District Project Manager for the Waikoloa Formerly Used Defense Site (FUDS). I spoke to Ann Loo and she expressed to me that you had concerns regarding public safety at the park and beach areas and requested additional written information. See below for project information that hopefully will address your concerns. Please feel free to contact me if you have any questions or require additional information. Thank you for your cooperation and support.

#### PROJECT BACKGROUND:

The Former Waikoloa Maneuver Area is a Formerly Used Defense Site (FUDS) on the island of Hawaii. The U.S. Navy acquired the property through a lease agreement in 1943 and used it until 1953 for intensive live-fire training. Before returning the property to its original owners, the Department of Defense conducted extensive surface clearance throughout the 135,000-acre property. Decades later, when the property was being evaluated for inclusion in the FUDS program, it was determined that a wide variety of munitions and explosives of concern (MEC) were still present on the surface and subsurface. In July 2003 the Army prepared a report describing its plan to address the safety risks. The report identifies approximately 50,000 acres in the Waikoloa-Waimea-Ialamilo-Puako areas where MEC pose the highest potential risk to the public. Your area is included within this area. Since 2003 the Army has expended approximately \$64 million in response actions at the former Waikoloa to clear approximately 10,000 acres. A total of over 1,400 unexploded munitions were disposed of and over 250 tons of munition debris and other former military debris were recycled. Most of the activities have been concentrated around Waikoloa Village and Waimea Town.

#### SCOPE OF WORK:

The Contractor will be responsible for preparing a project work plan which identifies the Contractor's proposed methodology of removing and disposing of all explosives hazards. I have attached a link for the project work plan that was prepared by contractor who performed work for the last 5 years

**EXHIBIT B**

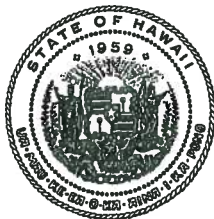
<http://www.poh.usace.army.mil/ENV/Docs/waikoloa-T01.pdf>. We are in the process of awarding a new contract and I anticipate that the work plan will be similar.

**SCHEDULING:**

All proposed field work activities would be coordinated with you and your staff prior to final scheduling and field work. We will work closely with your staff to come up with a schedule that would minimize any potential impact to the public's use and access.

Gary N. Shirakata  
USACE - Honolulu Engineer District  
Program & Project Manager  
Phone: (808) 438-0772  
Fax (808) 438-7801  
[gary.n.shirakata@usace.army.mil](mailto:gary.n.shirakata@usace.army.mil)

LINDA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

DIVISION OF STATE PARKS  
POST OFFICE BOX 936  
HILO, HAWAII 96721-0936

May 23, 2008

LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
FIRST DEPUTY

KEN C. KAWAHARA  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Mr. Clyde Namu'o, Administrator  
Office of Hawaiian Affairs  
711 Kapiolani Blvd., Suite 500  
Honolulu, HI 96813

Dear Mr. Namu'o:

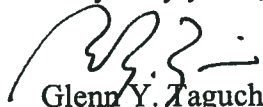
SUBJECT: Issuance of a Right-of-Entry to the United States of America,  
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Maneuver Area at Lalamilo, South Kohala, Hawaii, Tax Map Key:  
3<sup>rd</sup>/6-6-02: 31, 32, 34, 35, 40, 41 and 42

Enclosed please find a copy of the subject submittal requesting a Right-of-Entry over a  
portion of the Former Waikoloa Maneuver Area (currently the Hapuna Beach State  
Recreation Area and surrounding properties).

Your comments, concerns, recommendations, etc., are appreciated. Please submit your  
comments by June 12, 2008. If no response is received by that date, we will assume your  
agency has no comments.

Should you or your staff have any questions, please call me at (808) 974-6206.

Very truly yours,

  
Glenn Y. Taguchi  
Hawaii Parks District Superintendent

Enc.

c: SP Administration

**EXHIBIT C**